HIGH COURT UTTARAKHAND AT NAINITAL
(Court's order whether the case is not approved for reporting)

Description of the case
S.A. No. 117 of 2007

Smt. Amar Kaur and another

Vs.

Nagar Palika Parishad Rudrapur
and another.

Approved for reporting.

Date of Decision: - 11.12.2007

Initial of Judge:

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HIGH COURT OF UTTARAKHAND AT NAINITAL

SECOND APPEAL NO. 117 OF 2002

1. Smt. Amar Kaur
   W/o late Sher Singh
   Aged 72 years
2. Makkhan Singh
   S/o Late Sher Singh
   Aged 37 years
   Both residents of village Bhadhaipura
   Tehsil – Kichha
   Distrcit Udhamsinghnagar

.....Appellants

Vs.

1. Nagarpalika Parishad Rudrapur
   District- Udhamsingh Nagar
   Through its Executive Officers
2. State of Uttaranchal
   Through the Collector, Udham Singh Nagar

...Respondents

11.12.2007

Hon'ble Rajesh Tandon, J.

Heard Shri M.C. Pandey, counsel for the appellants and Shri Sandeep Tandon, counsel for the respondents.

2. By the present second appeal filed under Section 100 of the Code of Civil Procedure, the appellants have prayed for setting aside the judgment and decree dated 4.2.1999

passed by the Civil judge (Junior Division), Rudrapur, District Udhamsingh Nagar in C.S. No. 41 of 1990 and the judgment and decree dated 28.8.2002 passed by the Additional District Judge/Fast Tract Court, Udhamsingh Nagar in Civil appeal no. 11 of 1999.

3. Second appeal was admitted on the following substantial question of law:-

1. Whether a person having continuously in possession of property for more than thirty seven years (at the time of suit twenty three years) can be evicted by use of force and without following the procedure establishment by law?

4. Briefly stated, a suit being suit no. 41 of 1990 was instituted by the plaintiffs against the defendants praying for permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs over the land in dispute. According to the plaint averments, the plaintiffs are the permanent residents of village Bhadaipura, Tehsil Kichha, District Udham Singh Nagar since the year 1965. It has been stated that the plaintiffs have 8 acres of land situate at Bhadaipura, Tehsil Kichha, District Udham Singh Nagar out of which at the land measuring 32 x 35 ft. there is a pucca house of the plaintiff alongwith 4 huts. In the aforesaid 4 huts, the plaintiffs are using two huts for keeping fodders and two huts are being used for tying the animals. There are also trees of mango, guava, etc. According to the plaint, towards the North of the

disputed land there is land of Dewan Chand Bhatia, towards the South there is land of Sewa Singh, towards the East there is land of V.P. Singh and towards the West there is river and nazul land. It has been stated that the plaintiffs are in possession of the land in dispute for more than 25 years. There is house of plaintiff no. 1 and her two sons who have completed the proceedings for getting patttas in their favour in Nagar Palika, Rudrapur. With regard to the said land, the Special Nazul officer sent a notice to the plaintiffs and asked the plaintiff nos. 1 and 2 to deposit a sum of Rs. 675/- each. It has been alleged that since now no patta has been allotted in favour of the aforesaid land to the defendants. Further, it has been alleged that some employees of the Nagar Palika threatened the plaintiffs for dispossessing them from the land in dispute. They have also tried to demolish the house and the huts in question. It has been stated that the aforesaid nazul land is owned by the defendant no. 2, therefore, the defendant no. 2 has been impleaded as party. It has further been stated that the matter being urgent, the plaintiffs have no time left to serve the notice to the U.P. Government under Section 80 of the Code of Civil Procedure because the plaintiffs were afraid that they will be dispossessed by the defendants. Therefore, the plaintiffs have sought permission to file the suit along with the application under Section 80 (2) of Code of Civil Procedure. The plaintiffs have stated that the cause of action arose on 6.4.1990 when at about 11 a.m. the employees of defendants tried to disposes the plaintiffs but failed to took possession over the land in dispute and the cause of action still exists. Hence, the present suit has been

filed for permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs over the land in dispute.

5. A written statement has been filed on behalf of the defendants submitting therein that the plaintiffs are not in possession of the land in dispute legally. It has been submitted that a suit for eviction before the court of Prescribed Authority/Parganadhikari, Rudrapur is pending with regard to 684 sq. ft. land including the house in question and on the rest of the land, there is no possession of the plaintiffs. A civil suit is also pending before the Munsif Magistrate, Rudrapur with regard to the land in dispute. The plaintiffs were never in possession over the land in dispute. The boundaries given by the plaintiffs in the plaint are not identifiable. No proceeding with regard to grant of lease in favour of the plaintiffs is under consideration before the Nagar Palika. The name of the plaintiffs are also not included in the survey lists of the Nagar Palika which show the name of possessor of the land of Nagar Palika prepared in the year 1977. It has been admitted that a notice was sent to the plaintiffs for depositing a sum of Rs. 675/- but the same was not deposited. The plaintiffs are trying to possess the land in question unauthorisedly. The suit is barred by Section 80 of the Code of Civil Procedure. No cause of action has arisen against the defendants to file the present suit. The land in dispute is nazul land owned by the State Government. The plaintiffs cannot file any suit for permanent injunction

against the true owner. The suit filed by the plaintiffs are liable to be dismissed.

6. The plaintiffs have filed affidavit 8 ga, paper no. 11 ga i.e. notice issued in favour of Amar Kaur and notice paper no. 12 ga i.e. notice issued in favour of Makhan Singh towards documentary evidence.

7. Towards the oral evidence, the plaintiffs have examined Amar Kaur as P.W. 1, Jasbinder Singh as P.W. 2, Rajendra Singh as P.W. 3 and Balkar Singh as P.W.4. Towards the documentary evidence, the defendants have examined Ram Singh, Draftsman, Nagar Palika as D.W.1.

8. On the pleadings of the parties, the trial court has framed the following issues:-

1. As to whether the plaintiffs are in possession over the land in dispute since the last 25 years? If yes, its effect?
2. As to whether the plaintiffs are entitled to get the relief claimed?

9. While deciding as to whether the plaintiffs are in possession over the land in dispute since the last 25 years, the trial court has taken into consideration the statement of P.W.1 Amar Kaur who has deposed that she has no other land except the land in dispute. Further, this witness has pleaded ignorance about the signature on the alleged notice issued by the Nagar Palika. This witness has also pleaded ignorance about the measurement of land given in the

notice. P.W.2 Jasbinder Singh, P.W.3 Rajendra Singh and P.W.4 Balkar Singh have also corroborated the statement of the P.W.1 Amar Kaur. Further, the trial court has relied upon the statement of D.W.1 Ram Singh who has deposed that a suit for eviction is pending before the Parganadhikari, Rudrapur including the land in dispute and the said land is owned by the U.P. Government. This witness has further deposed that no allotment proceeding was started with regard to the land in dispute and there is no proceeding for allotment of land is dispute is pending before the Nagar Palika. The trial court has further taken into consideration paper nos. 11 ga and 12 ga which are notices in question. The trial court has recorded the finding that the aforesaid notices are with regard to the land of 50-50 sq. meters each and further the trial court has recorded the finding that there is no evidence on the record to prove that the plaintiffs have deposited a sum of Rs. 675/- in accordance with the aforesaid notices. The trial court has disbelieved the commission report. The trial court has concluded that the plaintiffs have failed to prove that they are in possession over the land in dispute for the last 25 years and in the absence of possession over the land in dispute, the status of the plaintiffs are that of unauthorized occupants.

10. On the basis of the aforesaid, the trial court has held that the plaintiffs are the unauthorized occupants because neither any lease has been allotted in their favour nor any allotment proceeding is pending with regard to the land in dispute. The trial court, therefore, dismissed the suit of the

plaintiffs holding that the plaintiffs are not entitled for any relief.

11. Aggrieved by the aforesaid judgment passed by the trial court, the plaintiffs went in appeal. The appellate court dismissed the appeal on the ground that the plaintiffs have failed to prove that they are in lawful possession over the land in dispute. Further the finding has been recorded that P.W.1 Amar Kaur in her cross-examination even could not depose that with regard to how much land she has filed the suit for permanent injunction. The appellate court has disbelieved the statement of P.W.2 Jasbinder Singh also who could not even mention the khasra number of the land in dispute. The appellate court has also taken into consideration the statement of D.W.1 Ram Singh who has specifically mentioned that a suit for eviction from 684 sq. ft. of Government land is pending before the Parganadhikari, Rudrapur including the land in question.

12. On the basis of the aforesaid, the appellate court has dismissed the appeal and has recorded the finding that the plaintiffs have failed to prove the ownership rights over the land in dispute. Further, the appellate court has recorded the finding after taking into consideration the eviction suit no. 22/17 of 1999-2000 that the defendants are not trying to dispossess the plaintiffs except in accordance with law.

13. In **Mahadeo SDavlaram Shelke and others v. Pune Municipal Corporation and another** reported in **(1995) 3 SCC 33,** it has been held as under:-

"9. It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession."

"Their possession is unlawful and that therefore, they cannot seek any injunction against the rightful owner for eviction them. There is thus neither balance of convenience nor irreparable injury would be caused to the appellants."

10. In Woodroff's Law Relating to injunctions, 2nd revised and enlarged Edn., 1992, at page 56 in para 30.01, it is stated as under:-

"an injunction will only be granted to prevent the breach of an obligation (that is a duty enforceable by law) existing in favour of the applicant who must have a personal interest in the matter. In the first place, therefore, an interference by injunction is founded on the existence of a legal right, an applicant must be able to show a fair prima facie case in support of the title which he asserts."

14. Both the courts below have concurrently held that the land in dispute belong to the defendant-respondents and the status of the plaintiffs-appellants with regard to the land in dispute are that of unauthorized occupants. In view of the concurrent findings, which are based on the oral as well as documentary evidence, there appears to be no such substantial question of law involved in the second appeal in favour of the plaintiffs-appellants.

15. In ***H.P. Pyarejan Vs. Dasappa 2006 AIR SCW 715,*** the Apex Court has observed as under:-

> "Under Section 100 of the Code (as amended in 1976) the jurisdiction of the High Court to interfere with the judgments of the courts below is confined to hearing on substantial questions of law. Interference with findings of fact by the High Court is not warranted if it involves re-appreciation of evidence."

16. In **Commissioner Hindu Religious & Charitable Endowments v. P. Shanmugama and others (2005) 9 SCC 232,** it has been held under:-

> "14. In our view, High Court has no jurisdiction in the second appeal t interfere with the finding of facts recorded by the first appellate court after careful consideration of the evidence, oral and documentary, on record. It was not open to the High Court to reverse the findings of fact as it has done."

17. In view of the aforesaid, second appeal is liable to be dismissed being devoid of merit.

18. Consequently second appeal is dismissed. No order as to costs.

(Rajesh Tandon, J.)

11.12.2007
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